

1968

# Statutes: An Extension of Long-Arm Jurisdiction

Minn. L. Rev. Editorial Board

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## Recommended Citation

Editorial Board, Minn. L. Rev., "Statutes: An Extension of Long-Arm Jurisdiction" (1968). *Minnesota Law Review*. 2897.  
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it by the Minnesota court. *State ex rel. Roy v. Tahash*<sup>73</sup> indicates that federal standards<sup>74</sup> governing habeas corpus proceedings will receive paramount consideration in post-conviction cases coming before the Minnesota court.<sup>75</sup> If the court takes this approach, a long stride will have been taken toward a single system of criminal justice for federal review will rarely disturb its adjudication under the Post Conviction Remedy.

## Statutes: An Extension of Long-Arm Jurisdiction

The 1967 Minnesota legislature enacted a long-arm statute<sup>1</sup>

ing. Thus, it would seem that the draftsmen might have provided that the court could summarily deny a petition based on any previously adjudicated grounds.

73. 152 N.W.2d 301 (Minn. 1967).

74. The federal standards are set out in note 16 *supra*.

75. See note 10 *supra*.

1. Subd. 1. As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any non-resident individual, or his personal representative, in the same manner as if it were a domestic corporation or he were a resident of this state. This section applies if, *in person or through an agent*, the foreign corporation or non-resident individual:

- (a) Owns, uses, or possesses any real or personal property situated in this state, or
- (b) Transacts any business within the state, or
- (c) Commits any tort in Minnesota causing injury or property damage, or
- (d) Commits any tort outside of Minnesota causing injury or property damage within Minnesota, if, (1) at the time of the injury, solicitation or service activities were carried on within Minnesota by or on behalf of the defendant, or (2) products, materials or things processed, serviced or manufactured by the defendant were used or consumed within Minnesota in the ordinary course of trade.

Subd. 2. The service of process on any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the summons upon the defendant outside this state with the same effect as though the summons had been personally served within this state.

Subd. 3. Only causes of action arising from acts enumerated in subdivision 1 may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

Subd. 4. Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereafter provided by law or the Minnesota Rules of Civil Procedure.

Subd. 5. Non-resident individual, as used in this section, means any individual, or his personal representative, who is not domiciled or residing in the state when suit is commenced.

MINN. STAT. § 543.19 (1967) [hereinafter referred to as the Long-Arm

authorizing *in personam* jurisdiction over nonresident individuals and corporations in causes of action arising out of the ownership of realty or personalty situated within Minnesota, the transaction of business within Minnesota, the commission of a tort in Minnesota, or the commission of a tort outside the state with injury resulting within.<sup>2</sup> Intended to supplement rather than replace prior jurisdictional and service of process statutes, the statute significantly extends the jurisdiction of Minnesota courts and is available to both nonresident and resident plaintiffs.

*International Shoe Company v. Washington*<sup>3</sup> provided the impetus to the enactment of long-arm statutes by liberalizing the constitutional due process standard which limits the right of a state to exercise jurisdiction over a nonresident. The *International Shoe* standard requires "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"<sup>4</sup> The basic consideration is whether it is reasonable to subject the defendant to suit in the particular jurisdiction.<sup>5</sup> The Long-Arm Statute

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Statute]. This is not to be confused with MINN. STAT. § 303.13 (Supp. 1966) [hereinafter referred to as the Corporate Statute] which provides for jurisdiction over a nonresident corporation that "makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota. . . ."

2. Several other states have long-arm statutes incorporating all or part of these provisions in varying forms. *See, e.g.,* IDAHO CODE ANN. § 5-514 (Supp. 1967); ILL. REV. STAT. ch. 110, § 17 (1965); ME. REV. STAT. ANN. tit. 14, § 704 (1965); MICH. STAT. ANN. §§ 27A.705, .712, .725, .735 (Callaghan ed. 1962); N.Y. CIV. PRAC. LAW § 302 (McKinney Supp. 1967); PA. STAT. ANN. tit. 12, § 331 (1953); TENN. CODE ANN. § 20-220 (1955); VT. STAT. ANN. tit. 12, § 855 (1958); WASH. REV. CODE § 4.28.185 (1962); WIS. STAT. § 262.05 (1965).

3. 326 U.S. 310 (1945). In this case, the Court upheld state court jurisdiction over a nonresident corporate defendant even though the corporation's only contacts with the state had been some eleven to thirteen salesmen operating on commission who transmitted orders to the central office located in another state.

4. *Id.* at 316. Prior to *International Shoe* the traditional due process test of state jurisdictional power required the physical presence of the defendant within the forum state. *Pennoyer v. Neff*, 95 U.S. 714 (1877); *Sellers v. Sellers*, 196 Minn. 143, 264 N.W. 425 (1936).

For a discussion of the expansive effects of *International Shoe*, see generally 1 W. BARRON & A. HOLTZOFF, *FEDERAL PRACTICE & PROCEDURE* § 179 (Wright ed. 1960); 2 J. MOORE, *FEDERAL PRACTICE* ¶ 4.25 (3), (4); Note, *Personal Jurisdiction in Minnesota Over Absent Defendants*, 42 MINN. L. REV. 909 (1958); Note, *The Growth of the International Shoe Doctrine*, 16 U. CHI. L. REV. 523 (1949).

5. 326 U.S. at 317; see Note, *Developments in the Law: State-Court Jurisdiction*, 73 HARV. L. REV. 909, 919-23 (1960) [hereinafter cited as *Developments*].

takes advantage of these less stringent due process requirements to legislatively expand the jurisdictional power of the state court over nonresidents.<sup>6</sup>

Subdivision 1(a) of the statute subjects a nonresident to the jurisdiction of the Minnesota courts if he "owns, uses, or possesses any real or personal property situated in the state." This provision is similar to *quasi in rem* jurisdiction in that both are based on ownership of property. However, in *quasi in rem* jurisdiction the cause of action need not be related to the property, although the recovery allowed is limited by the value of the property.<sup>7</sup> Under the Long-Arm Statute the jurisdiction must arise out of the relationship to the property, but since it is *in personam* jurisdiction there is no arbitrary limit on either the type of action that may be brought or the amount that can be recovered.

Since ownership, use, or possession is the basis for jurisdiction under this provision of the statute, the relationship between the nonresident and the property located within the state must satisfy due process as well as traditional property law standards. Because property law definitions can encompass situations of varied significance,<sup>8</sup> ownership in the context of the rights to an article or a parcel of land may not be equivalent to the type of ownership required in the jurisdictional due process context. Consequently, the past treatment of ownership

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6. For a general examination of the constitutionality of the statutes which have resulted from the *International Shoe* doctrine, see generally Cleary & Seder, *Extended Jurisdictional Bases for the Illinois Courts*, 50 NW. U.L. REV. 599 (1955); Dambach, *Personal Jurisdiction: Some Current Problems and Modern Trends*, 5 U.C.L.A.L. REV. 198 (1958); Foster, *Personal Jurisdiction Bases on Local Causes of Action*, 1956 WIS. L. REV. 522; O'Connor & Goff, *Expanded Concepts of State Jurisdiction Over Non-Residents: The Illinois Revised Practice Act*, 31 NOTRE DAME LAW. 223 (1955).

7. *E.g.*, *Rosenblet v. Pere Marquette Ry.*, 162 Minn. 55, 202 N.W. 56 (1925); *Wagner v. Farmers Co-operative Exch. Co.*, 147 Minn. 376, 180 N.W. 231 (1920). See also *Pennoyer v. Neff*, 95 U.S. 714 (1877); *Siro v. American Express Co.*, 99 Conn. 95, 121 A. 280 (1923). However, the amendments to MINN. R. Crv. P. 4.04, effective Feb. 1, 1968, would make a judgment valid as to the amount of the claim rather than limit it to the value of the property upon which jurisdiction is based unless a default judgment is entered.

8. Compare *Reed v. Horton*, 135 Minn. 17, 159 N.W. 1080 (1916) ("owner" includes a conditional vendee and a mortgagor), with *Atwater v. Spalding*, 86 Minn. 101, 90 N.W. 370 (1902) ("owner" is person in whom is vested the ownership, dominion, or title of property), and *Benjamin v. Wilson*, 34 Minn. 517, 26 N.W. 725 (1886) (ownership is any interest which may be sold); see *Beck v. Council of the City of St. Paul*, 235 Minn. 56, 50 N.W.2d 81 (1951).

concepts in Minnesota may be of limited assistance in arriving at guidelines for applying this section of the statute. There are, however, several statutes in other states with analogous provisions that have been upheld constitutionally.<sup>9</sup> One of these, the Pennsylvania statute,<sup>10</sup> has been interpreted to mean that a nonresident trustee who administers real property in the state is an "owner;"<sup>11</sup> that an excavator who causes damage to adjacent land is a "user" of the damaged land;<sup>12</sup> and that a nonresident mortgagee who collects rents from outside the state after default of the mortgagor is also a "user."<sup>13</sup> Thus it would appear that one important factor in determining ownership is monetary benefit, either derived from or incident to the relationship with the property.

The application of this section of the statute may be further complicated by its failure to distinguish between jurisdiction derived from real property and that resulting from personal property. Realty is permanently within the jurisdiction of the court, has inherent income producing capabilities, and is usually of significant value.<sup>14</sup> These characteristics insure that in most instances the owner, user, or possessor will have substantial contact with the forum state.<sup>15</sup> The nature of personalty, on the other hand, is that it is perishable, can be readily moved out of the state's control, and can be of minimal value.<sup>16</sup> More importantly, its presence in a state may be completely fortuitous as far as the actual owner is concerned, as in situations involving stolen property, the conditional sales contract, and the chattel mortgage.<sup>17</sup> In each of these instances the title holder or

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9. ILL. REV. STAT. ch. 110, § 17(1) (c) (1965); ME. REV. STAT. ANN. tit. 14, § 704(c) (1965); N.Y. CIV. PRAC. LAW § 302(a) (4) (McKinney Supp. 1967); PA. STAT. ANN. tit. 12, § 331 (1953); WASH. REV. CODE § 4.28.185(1) (c) (1962).

10. The Pennsylvania long-arm statute applies only to realty. PA. STAT. ANN. tit. 12, § 331 (1953); see Note, *Ownership, Possession, or Use of Property as a Basis of In Personam Jurisdiction*, 44 IOWA L. REV. 374, 378-81 (1959) (discussion of the Pennsylvania statute).

11. *Jamison v. United Cigar Whelan Stores*, 68 Pa. D. & C. 121 (Phila. County Ct. 1949).

12. *Chong v. Faull*, 88 Pa. D. & C. 557 (Phila. County Ct. 1954).

13. *Dubin v. Philadelphia*, 34 Pa. D. & C. 61 (Phila. County Ct. 1938).

14. See Note, *Ownership, Possession, or Use of Property as a Basis of In Personam Jurisdiction*, 44 IOWA L. REV. 374, 382 (1959).

15. See *id.* at 375 (ownership of realty fits the concept of "doing business" more readily than it fits the single act theory).

16. See *id.* at 382; *Developments* 947-48.

17. A provision allowing for jurisdiction based on ownership of personal property was specifically excluded from the UNIFORM INTERSTATE

owner is technically within the statute's provisions, but is likely to have had little or no control over the whereabouts or the use of the personality.<sup>18</sup>

One case<sup>19</sup> suggests that the courts will not sustain jurisdiction based on such technical grounds. However, that case sustained jurisdiction on the basis of the transaction of business within the state. The argument had been made that jurisdiction was also available due to the retention of title by the manufacturer pursuant to a conditional sales contract, but the court indicated that, standing alone, this might not satisfy the jurisdictional requirement of ownership of tangible personality within the state.<sup>20</sup> This discussion indicates that technical compliance with the provisions of the statute may not be sufficient to meet the *International Shoe* due process requirement. If ownership, use, or possession is tenuous, additional contacts with the state may be necessary.

Subdivision 1(b) of the statute provides *in personam* jurisdiction over a nonresident individual or corporation who "transacts any business within the state" for causes of action arising out of such transactions. The determination of what shall constitute the transaction of business must, of course, be compatible with the due process standard established in *International Shoe*.<sup>21</sup> It cannot mean *any* transaction, regardless of how insignificant or fortuitous, since *International Shoe* indicated that the "nature and quality and the circumstances"<sup>22</sup> of the act are significant, and *McGee v. International Life Insurance Company*<sup>23</sup> added that jurisdiction must be based on "substantial connection" with the state.<sup>24</sup> However, the Minnesota Supreme Court will

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AND INTERNATIONAL PROCEDURE ACT in order to avoid the anticipated difficulties that might arise from these three situations. *Commissioner's Note*, UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.03, 9B UNIFORM LAWS ANN. 313 (1966).

18. Even if these considerations were to ultimately provide a defense to the action, the statute could be used as an instrument of harassment by forcing a nonresident who is technically within its purview to sustain the inconvenience and expense of establishing such defense in the forum state. Cf. *Dubin v. Philadelphia*, 34 Pa. D. & C. 61 (Phila. County Ct. 1938).

19. *Nixon v. Cohn*, 62 Wash. 2d 987, 385 P.2d 305 (1963).

20. *Id.* at 994, 385 P.2d at 309. See also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 84.A, comment (Tent. Draft No. 3, 1956).

21. Idaho has attempted to spell out in detail the sort of transactions it believes to be a basis for jurisdiction. See IDAHO CODE ANN. § 5-514(a) (Supp. 1967).

22. 326 U.S. at 318.

23. 355 U.S. 220 (1957).

24. *Id.* at 223. See *Trippe Mfg. Co. v. Spencer Gifts, Inc.*, 270 F.2d

probably interpret the phrase as liberally as is consistent with due process, since it has expressed its approval of the trend toward liberality in state court jurisdiction.<sup>25</sup>

The Minnesota Supreme Court's interpretation of the Corporate Statute phrase, "contract . . . to be performed in whole or in part . . . in Minnesota,"<sup>26</sup> is also relevant to the Long-Arm Statute since the two statutes, in this context, are similar in purpose and language.<sup>27</sup> Since the Long-Arm Statute cannot alter the basic due process standards, it would seem that interpretation of the phrase "transacts any business," although it incorporates more acts than the more restrictive Corporate Statute, will be based upon the general principles which evolved thereunder. Under the Corporate Statute, the court has noted that an examination of the "quality and nature of the transaction rather than . . . the quantity of business done" is necessary.<sup>28</sup> Furthermore, in *Dahlberg Company v. Western Hearing Aid Center, Limited*<sup>29</sup> the court held that it had jurisdiction because the "defendants . . . enjoyed the benefits of the laws of this state and . . . had access to our courts to enforce any rights in regard to the transactions involved."<sup>30</sup> But in *Fourth Northwestern National Bank v. Hilson Industries, Inc.*,<sup>31</sup> where the only contact between the nonresident buyer and the state was the initial solicitation and the place of payment, the court denied jurisdiction since there were no acts of significance within the state that would enable the defendant to enjoy the benefits of Minnesota law. It is significant that in *Hilson* part performance was

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821 (7th Cir. 1959). But see *Kornfuehrer v. Philadelphia Bindery, Inc.*, 240 F. Supp. 157 (D. Minn. 1965); Note, *Due Process and Foreign Corporations—The Minnesota Single Act Statute*, 50 MINN. L. REV. 946, 959-60 (1966).

25. See *Beck v. Spindler*, 256 Minn. 543, 553, 99 N.W.2d 670, 677 (1959). This clause is very similar to § 1.03 of the UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT, which the Commissioners on Uniform Laws stated should be given expansive interpretation. *Commissioner's Note*, UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.02, 9B UNIFORM LAWS ANN. 310-11 (1966).

26. MINN. STAT. § 303.12(1)(3) (Supp. 1966).

27. It is true that a literal reading of the two statutes does not reveal complete harmony. The Corporate Statute requires part performance within the state while the Long-Arm Statute includes a situation with all contract negotiations within the state, but with performance by both parties without. The more normal business transaction, however, would include some elements of performance within the state, thus falling within both statutes.

28. *Beck v. Spindler*, 256 Minn. 543, 552, 99 N.W.2d 670, 677 (1959).

29. 259 Minn. 330, 107 N.W.2d 381 (1961).

30. *Id.* at 337, 107 N.W.2d at 385.

31. 264 Minn. 110, 117 N.W.2d 732 (1962).

to take place within Minnesota, thus satisfying the literal terms of the Corporate Statute. Jurisdiction was denied, however, since the contacts were insufficient to satisfy due process.<sup>32</sup>

Under the Long-Arm Statute, the court should continue to examine the quality and nature of the contacts and the defendant's enjoyment of, or opportunity to enjoy, the benefits of the laws and courts of the state. In addition, assistance may be obtained from foreign cases interpreting statutory provisions with similar language.<sup>33</sup> Furthermore, both *Dahlberg* and *Hilson* recognize that the overall reasonableness of the assertion of jurisdiction "may be tested by the standards analogous to those of *forum non conveniens*."<sup>34</sup> The relevant considerations under this doctrine are "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises . . .," and the enforceability of a judgment if one is obtained.<sup>35</sup> Of course, the courts should also be receptive to a dismissal motion based on *forum non conveniens*<sup>36</sup> where, despite compliance with both the statute and

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32. *Id.* at 118, 117 N.W.2d at 736. Both *Dahlberg* and *Hilson* involved nonresident buyers entering into agreements with Minnesota sellers; it is evident that the Minnesota court will be more hesitant to impose jurisdiction when the nonresident is a buyer rather than a seller. See Note, *Due Process and Foreign Corporations—The Minnesota Single Act Statute*, 50 MINN. L. REV. 946, 953 n.34 (1966). This situation appeared in *Marshall Egg Trans. Co. v. Bender-Goodman Co.*, 275 Minn. 534, 148 N.W.2d 161 (1967), where the court refused jurisdiction, citing *Hilson*. It is not clear, however, whether the decision was based on due process grounds or a policy of avoiding the discouragement of nonresident buyers from doing business in Minnesota. The decision has been criticized for failing to clearly distinguish the two approaches. Comment, 52 MINN. L. REV. 723 (1968).

33. See, e.g., *National Gas Appliance Corp. v. AB Electrolux*, 270 F.2d 472 (7th Cir. 1959), *cert. denied*, 361 U.S. 959 (1960); *Magnaflux Corp. v. Foerster*, D.C., 223 F. Supp. 552 (N.D. Ill. 1963); *Kropp Forge Co. v. Jawitz*, 37 Ill. App. 2d 475, 186 N.E.2d 76 (1962); *Grobark v. Addo Mach. Co.*, 16 Ill. 2d 426, 158 N.E.2d 73 (1959); *Berlemann v. Superior Distrib. Co.*, 17 Ill. App. 2d 522, 151 N.E.2d 116 (1958). Illinois was one of the first jurisdictions to use the "transaction of business" language. For a thorough discussion of the background and application of the Illinois statute, see Jenner & Tone, *Historical and Practice Notes*, ILL. STAT. ANN. ch. 110, § 17, at 165 (1955); *id.* at 22 (Supp. 1966).

34. *Fourth Northwestern Nat'l Bank v. Hilson Indus., Inc.*, 264 Minn. 110, 119, 117 N.W.2d 732, 737 (1962); *Dahlberg Co. v. Western Hearing Aid Center, Ltd.*, 259 Minn. 330, 335, 107 N.W.2d 381, 384 (1961).

35. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). See Note, *Due Process and Foreign Corporations—The Minnesota Single Act Statute*, 50 MINN. L. REV. 946, 953-54 (1966); *Developments* 1011-13.

36. This policy was adopted by Minnesota in *Johnson v. Chicago, B. & Q.R.R.*, 243 Minn. 58, 66 N.W.2d 763 (1954). See also *Hill v.*



due process, Minnesota is not the proper place for trial.<sup>37</sup>

Subdivision 1(c) provides for jurisdiction over a nonresident who "commits any tort in Minnesota causing injury or property damage" while subdivision 1(d) subjects a nonresident to Minnesota jurisdiction if he "commits any tort outside of Minnesota causing injury or property damage within Minnesota . . . ." Subdivision 1(c) encompasses an act and an injury, both occurring within the state,<sup>38</sup> or an act occurring within the state with resultant injury without.<sup>39</sup> In the case of a tort committed without the state and injury within, subdivision 1(d) further requires that either "(1) . . . solicitation or service activities [be] carried on within Minnesota by or on behalf of the defendant, or (2) products, materials or things processed, serviced or manufactured by the defendant [be] used or consumed within Minnesota in the ordinary course of trade" at the time of the injury. This latter section is a legislative recognition that injury alone is not a sufficient "minimum contact" to confer jurisdiction. However, the additional contacts which are necessary when the tort occurs outside the state are not required by the statute to be related to the actual injury. Furthermore, courts sustaining jurisdiction under similar statutes have often been satisfied by

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Upper Mississippi Towing Corp., 252 Minn. 165, 89 N.W.2d 654 (1958); Ramsey v. Chicago Great W. Ry., 247 Minn. 217, 77 N.W.2d 176 (1956). The policy, initially formulated by the Supreme Court in Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947), allows a court to refuse to accept jurisdiction although jurisdiction has been properly authorized by the legislature, if it is an inappropriate forum for trial. *Id.* at 507.

37. Although *forum non conveniens* is available where a resident plaintiff is attempting to use the court's jurisdiction, Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947), it would seem that where both plaintiff and defendant are nonresidents and jurisdiction is obtained under the Long-Arm Statute, the Minnesota courts should be especially alert, not only to the possibility of harassment, but also to the opportunity to relieve the state from the time and expense involved in handling nonresident litigation.

38. The constitutionality of statutes basing jurisdiction on the commission of a tortious act, or a tort in part within the state, has been uniformly sustained. See Nelson v. Miller, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); Painter v. Home Fin. Co., 245 N.C. 576, 96 S.E.2d 731 (1957); Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664 (1951); Reese & Galston, *Doing An Act or Causing Consequences as Bases of Judicial Jurisdiction*, 44 IOWA L. REV. 249 (1959). Cf. Ehlers v. United States Heating & Cooling Mfg. Corp., 267 Minn. 56, 124 N.W.2d 824 (1963) (product manufactured outside state causing injury within).

39. Wisconsin's long-arm statute so provides expressly. Even under the more general language of the Minnesota Act, so long as the circumstances attendant to an act in the state with resulting injury without satisfying the various aspects of the *International Shoe* due process test, jurisdiction should be available.

contacts with the state that were not related to the particular action.<sup>40</sup>

Since the Corporate Statute allows jurisdiction over tort actions against nonresidents arising out of acts committed without the state if injury occurred within, the additional contacts required by the Long-Arm Statute might appear to be a contraction of the jurisdictional reach over noncorporate defendants. An examination of the case law under the Corporate Statute, however, indicates that the courts have looked at the entire transaction more closely than the statute demanded in order to decide the due process question. In all cases there has been some contact<sup>41</sup> with the state beyond the injury, such as a fifty-year history of sales of the defendant's product,<sup>42</sup> solicitation for sale of defendant's product,<sup>43</sup> or use of the defendant's product within the state in the ordinary course of trade.<sup>44</sup> Jurisdiction based on a single act "without more"<sup>45</sup> contact<sup>46</sup> has also been refused. Thus, it would appear that the Minnesota legislature has done little more than codify the circumstances under which Minnesota courts have sustained jurisdiction in nonresident tort cases in the past. It follows that the cases decided under the Corporate Statute will have continuing validity as precedent in applying the new legislation.

Due to its focus on the more common products liability situa-

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40. See cases cited in *Commissioner's Note*, UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.03, 9B UNIFORM LAWS ANN. 312. Subdivision 1(d) is identical to a section of the Wisconsin general jurisdiction statute, WIS. STAT. § 262.05(4) (Supp. 1967), which has been said to require two jurisdictional contacts: (1) the occurrence in the state of the injury which the defendant is claimed to have caused, and (2) some additional contact not necessarily related to that injury. Foster, *Revision Notes*, WIS. STAT. ANN. § 262.05, at 30 (Supp. 1967).

41. The Long-Arm Statute provides that the activities may either be carried on "by or on behalf of the defendant." This phrase appears to preclude any argument that solicitation or service activities by such persons as franchisers, independent salesmen, or independent contractors hired to service products are not those of the manufacturer.

42. *Atkins v. Jones & Laughlin Steel Corp.*, 258 Minn. 571, 575, 104 N.W.2d 888, 891 (1960).

43. *Adamek v. Michigan Door Co.*, 260 Minn. 54, 55, 108 N.W.2d 607, 607-08 (1961).

44. *Ehlers v. United States Heating & Cooling Mfg. Corp.*, 267 Minn. 56, 61-62, 124 N.W.2d 824, 827 (1963).

45. *Pendzimas v. Eastern Metal Prods. Corp.*, 218 F. Supp. 524, 527 (D. Minn. 1961).

46. *Id.*; *Carlson v. Chatfield Mach. Co.*, 228 F. Supp. 162 (D. Minn. 1964); *Hutchinson v. Boyd & Sons Press Sales, Inc.*, 188 F. Supp. 876 (D. Minn. 1960); cf. *Kornfuhrer v. Philadelphia Bindery, Inc.*, 240 F. Supp. 157 (D. Minn. 1965).

tions, this provision of the new statute does not cover all cases where jurisdiction should be authorized when a single act without the state causes injury within.<sup>47</sup> Nonetheless, it does encompass the most common situations and, in that respect, provides a relatively concise standard for jurisdiction for most cases.<sup>48</sup>

Subdivision 2 of the new statute provides that personal service of process on the nonresident outside Minnesota will have the same effect as though service had been made within the state.<sup>49</sup> The purpose of this provision is to provide the plaintiff with an authorized type of service that is most likely to lead to actual notice,<sup>50</sup> and personal service is the best method for giving such assurance.<sup>51</sup> Although the new statute does not specify the manner in which personal service is to be made, it seems reasonable to conclude that the legislature intended "personal service" to mean that defined in the Minnesota Rules of Civil Procedure.<sup>52</sup> The statute states, however, only that personal

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47. The Long-Arm Statute, in effect, supersedes the Corporate Statute in most instances. However, one situation can be posed that probably would not fall within the Long-Arm Statute but which might be covered by the Corporate Statute. Assume that an Illinois corporation's plane, while flying over Wisconsin crashes into a Wisconsin dam, resulting in the flooding of property in Minnesota. Jurisdiction in an action for recovery of the damages to the Minnesota land would not be available under the Long-Arm Statute if there had been no other activities in the state. Under the Corporate Statute, however, the damage would be considered a tort committed in part within the state, thus technically conferring jurisdiction. The question still remains whether a court would agree that the injury alone was sufficient to meet due process requirements. See notes 40-46 *supra* and accompanying text.

48. One court has delineated the following factors which must be considered from a review of the applicable Supreme Court decisions: "quantity of the contacts, the nature and quality of the contacts, . . . the source and connection of the cause of action with those contacts, . . . the interest of the forum state and convenience. . . ." *Aftanase v. Economy Baler Co.*, 343 F.2d 187, 197 (8th Cir. 1965). These factors have been approved and applied in *Bonhiver v. Louisiana Brokers Exch., Inc.*, 255 F. Supp. 254 (D. Minn. 1966), and *McDermott v. Bremson*, 273 Minn. 104, 139 N.W.2d 809 (1966).

49. In the past, personal service of process on nonresidents has been authorized by MINN. R. Civ. P. 4.04. However, the effect of such service is the same as that of substituted service. Substituted service is limited in that the defendant, if he does not receive actual notice, "may be permitted to defend at any time within one year after judgment, on such terms as may be just." MINN. R. Civ. P. 4.043. The new statute provides the defendant with no such opportunity.

50. *Milliken v. Meyer*, 311 U.S. 457, *rehearing denied*, 312 U.S. 712 (1940).

51. *International Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

52. MINN. R. Civ. P. 4.03 provides that personal service upon an individual can be made by "delivering a copy to him personally or by

service outside the state *may* be made, not that it is the only method allowable. This indicates that any method meeting constitutional due process requirements and authorized by the Minnesota Rules of Civil Procedure would also be valid. The effect of these other methods, however, would be that of substituted service, not personal service within the state.<sup>53</sup>

Subdivision 3 limits the causes of action in a suit in which jurisdiction is based on this statute to those arising from acts enumerated in subdivision 1. This allows the defendant to contest an action based on the statute without becoming exposed to suit on unrelated claims. Subdivision 4 provides that the statute shall in no way affect the right to serve process in any of the methods heretofore authorized by the Minnesota Rules of Civil Procedure or by statute, nor shall it affect this right as to any future laws or amendments. This, in conjunction with subdivision 2, indicates that only constitutional due process requirements will limit the method of service.

Subdivision 5 is intended to prevent the jurisdictional gap that could occur if the statute directed itself to a person who was a nonresident at the time that the cause of action arose. In such a case the defendant could leave the state after performing the act upon which jurisdiction would be based and claim immunity to process under the long-arm statute.<sup>54</sup> Therefore, the statute declares that the nonresident, or his personal representative,<sup>55</sup> is a person "not domiciled or residing in the state when suit is commenced."

The overall effect of the Long-Arm Statute is to increase the availability of the Minnesota courts to plaintiffs with claims against nonresident individuals and corporations, particularly as to claims resulting from property within the state owned by nonresidents. The frequently limited satisfaction available from *quasi in rem* jurisdiction can now be replaced in most instances

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leaving a copy at his usual place of abode with some person of suitable age and discretion then residing therein."

53. MINN. R. CIV. P. 4.04, 4.043.

54. This argument was rejected in *O'Connor v. Wells*, 43 Misc. 2d 1075, 252 N.Y.S.2d 861 (Sup. Ct. 1964).

55. In a legal context "personal representative" commonly means "executor" or "administrator." *Jones v. Minnesota Transfer Ry.*, 108 Minn. 129, 121 N.W. 606 (1909); *Lowry v. Duluth*, 94 Minn. 95, 101 N.W. 1069 (1905); *BALLENTINE'S LAW DICTIONARY* 961 (2d ed. 1948); *WEBSTER'S NEW INTERNATIONAL DICTIONARY* 1687 (3d ed. 1965). But the Minnesota Nonresident Motorist Statute, MINN. STAT. § 170.55 (1961), refers to "executor, administrator, or personal representative," indicating that in at least that context the legislature intends personal representative to mean more than just executor or administrator.